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CRIMINAL APPEALS &
FEDERAL HABEAS CORPUS BUREAU

March 21, 2023

BY ECF

The Honorable Daniel J. Stewart
United States Magistrate Judge
James T. Foley U.S. Courthouse
445 Broadway, 4th Floor
Albany, NY 12207

Re: *Hunt v. Eckert*
No. 9:22-cv-0171 (DNH/DJS)

Your Honor:

On behalf of respondent, I respectfully request a 40-day third extension of time to respond to petitioner's claim, first advanced in his Traverse, that his habeas corpus petition challenging a 1990 judgment falls within the actual-innocence exception to the statute of limitations. Respondent's current response deadline is March 23, 2023, as a result of two prior 30-day extensions granted by the Court (Dkt. Nos. 26, 30.) Should the Court grant the requested extension, respondent's new deadline would be May 2, 2023.

The requested time is needed to obtain additional important records identified during my review of petitioner's 202-page Traverse and his trial transcript. Petitioner's innocence claim focuses largely on prosecution witness Philip Whaley, a career criminal who testified that petitioner sold him the murdered victim's credit cards and later admitted the killing. According to petitioner, new evidence shows that Whaley testified falsely in exchange for favors from the prosecution or police. Petitioner points to several letters from Whaley to the prosecution or police and to a series of alleged favors involving various criminal and parole violation charges against Whaley. We are missing: two of the letters; certain trial exhibits that we believe will show that some or all of the letters are not new evidence; and records of certain court proceedings involving Whaley. We must also request certain other trial

exhibits that are relevant to other parts of petitioner's innocence claim or to the materiality of his allegedly new evidence.

I was unable to make this request sooner, because I was unable to determine the scope of the additional records needed (and hence the amount of additional time needed), without first conducting time-consuming review of petitioner's Traverse and trial transcript.

Because it is difficult to communicate with petitioner efficiently on account of his pro se status and upstate incarceration, I have not consulted him with respect to this request.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Hannah Long', written in a cursive style.

Hannah Stith Long
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cc: Mr. Brian Lee Hunt (by mail)
DIN 96-B-0328
Wende Correctional Facility
3040 Wende Road
P.O. Box 1187
Alden, NY 14004-1187

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

BRIAN LEE HUNT,

Petitioner,

v.

STEWART ECKERT, Superintendent of
Wende Correctional Facility

Respondent.

DECLARATION OF SERVICE

No. 9:22-cv-00171 (DNH/DJS)

HANNAH STITH LONG, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury that on March 21, 2023, she served the attached letter motion on petitioner by mailed it, via the U.S. Postal Service, to him at the address below.

Mr. Brian Lee Hunt
DIN 96-B-0328
Wende Correctional Facility
3040 Wende Road
P.O. Box 1187
Alden, NY 14004-1187

Executed: March 21, 2023

/s/ Hannah Stith Long
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